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March 9, 1990

VIA FEDERAL EXPRESS

Mr. Frank Stapleton
Court of Appeal for the
State of California
Second District - Division Four
3580 Wilshire Blvd.
Los Angeles, California 90010

Re: Church of Scientology of California and Mary Sue Hubbard, Appellants, v. Gerald Armstrong, Defendant. Bent Corydon, Appellee. Civ. No. B 038975

Dear Mr. Stapleton:

This letter is in response to the letter sent to the court by Toby L. Plevin, attorney for Bent Corydon, dated March 6, 1990.

Initially, I should note for the record that I had no notice of your communication with Ms. Plevin until I received her letter. Upon receiving her letter, I telephoned you yesterday to inquire as to the nature of the communication and as to why you had communicated with only one party to this appeal. You explained that you merely intended to inquire as to the position of Corydon with respect to the petition by Gerald Armstrong for leave to file a brief. You further acknowledged that such communication also should have been made to myself as counsel for appellants. I pointed out to you that, on behalf of the appellants, I independently had filed a response opposing Mr. Armstrong's "petition", which you indicated you already had received. I further noted, however, that Ms. Plevin's letter went far beyond a statement of position, and undertook a general, extra-record attack on the appellants and their counsel. I stated to you that I felt that it was necessary for me to respond to Ms. Plevin's letter, since I submit that it

contains numerous misstatements and distortions. You stated that I should respond in a timely manner. This letter is that response.

Ms. Plevin's letter of March 6 contains the following false or distorted statements:

1. On page 2, in the top runover paragraph, Ms. Plevin states that "Judge Breckenridge was not informed that, as part of the settlement agreement, Armstrong was filing no opposition to the appeal" in the underlying case between Armstrong and the Church of Scientology of California. In fact, as Ms. Plevin is well aware, at the time of the settlement agreement and of the hearing before Judge Breckenridge, the appeal in question had been fully briefed and argued and was awaiting decision by Division Three of this court. The parties to that appeal contemplated that Division Three would render a decision on the merits of that appeal.[1] It is true that in the settlement agreement, Mr. Armstrong waived the right to take any further appeals in the event Division Three reversed the decision of the Superior Court. Mr. Armstrong further agreed not to file any new briefs if the Church were to take an appeal to the California Supreme Court. In such an event, of course, Mr. Armstrong's previously filed briefs in Division Three could have been considered by the California Supreme Court. See California Rules on Appeal, Rule 29.3.

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[1] As it happened, Division Three dismissed the Church's appeal for lack of appellate jurisdiction, an issue which had neither been briefed nor raised on oral argument, thereby requiring the appellants to renotice and reperfect their appeal. There then was a delay of over two years until Division Three established a new briefing schedule. The appellants filed their brief on this new appeal in Division Three on December 18, 1989. Both before and after filing their latest brief, appellants' counsel communicated by telephone and by letter with Michael Tabb, a partner of Michael Flynn and counsel of record for Mr. Armstrong. Counsel for appellants and Mr. Tabb agreed that Mr. Armstrong could and would respond to the appellants new brief in Division Three, most likely by moving to incorporate relevant sections of Mr. Armstrong's earlier brief. Mr. Tabb never did so because he apparently was dismissed by Mr. Armstrong as counsel.

2. Also on page 2, in the top runover paragraph, Ms. Plevin suggests that "appellants never intended to retry the case even if they prevailed on appeal". In fact, in appellants brief on the pending appeal in Division Three (see footnote 1, supra), they readily disclosed that Mr. Armstrong's actual potential liability had been limited to nominal damages by a series of indemnity agreements. Appellants argued, with ample citation, that they are entitled to pursue claims for nominal damages for invasion of privacy and conversion. They further argued that if they should prevail on appeal, there indeed would be no need for a new trial; all that would be left to be done would be for the trial court to enter judgment for nominal damages. These facts, fully set forth in appellants brief in the case before Division Three, completely belie the irresponsible assertion by Ms. Plevin of a "collusive" appeal.

3. On page 2 of her letter, Ms. Plevin states that Church's counsel misrepresented to Judge Breckenridge "that Armstrong had agreed to a stipulated sealing order". We find this statement of Ms. Plevin particularly curious, since she herself attached as Exhibit D to her letter the very stipulated sealing order referred to, which clearly was signed by Mr. Armstrong's counsel on his behalf.

4. On the top of page 3 of her letter, Ms. Plevin argues that Church's counsel misrepresented to Judge Breckenridge that "the settlement agreement had been filed with the court". No such representation was made. Rather, the stipulated sealing order did contain a provision that the settlement agreement would be filed with the court. Subsequently, the parties to the settlement agreed not to file the settlement agreement, a procedure to which Judge Breckenridge apparently agreed.

Ms. Plevin fails to inform this court that in the proceedings below before Judge Geernaert, Ms. Plevin made a motion to compel the parties to file the settlement agreement, which motion was denied by Judge Geernaert. Ms. Plevin took no appeal from that order. Her belated attempt to inject it into the present appeal is improper.

5. In the first full paragraph on page 3, Ms. Plevin again suggests that Armstrong was precluded from opposing the Church's appeal in his underlying case. We have already pointed out how and why this assertion is false.

6. In the second full paragraph on page 3, Ms. Plevin falsely states that "Armstrong was required to avoid service of process". In support of her claim Ms. Plevin misquotes paragraph 7H of the settlement agreement. The actual language of the agreement stated that Armstrong "shall not make himself amenable to service of any such subpoena in a manner which invalidates the intent of this provision." This clause was intended merely to prevent the possibility of a collusive attempt by Armstrong to avoid the provisions of the settlement agreement by going out of his way to make himself amenable to service. The clause in no way interferes with service in the normal course.

7. At the top of page 4, Ms. Plevin falsely states that Mr. Flynn agreed to withdraw from representation of Mr. Armstrong in the Church's appeal in the underlying Armstrong case. In fact, Mr. Flynn and his partner, Mr. Tabb, continued to represent Mr. Armstrong in that appeal until recently, when they apparently were dismissed by Mr. Armstrong. Mr. Tabb personally told me on the telephone that he was prepared to file a brief in that case on behalf of Mr. Armstrong, or a motion incorporating portions of Mr. Armstrong's prior brief.

8. Also on the top of page 4, Ms. Plevin states that Mr. Flynn was forced to withdraw from representation of Mr. Corydon as a result of the settlement agreement. In fact, as Ms. Plevin well knows, the Superior Court of Riverside County issued an order refusing to permit Mr. Flynn to represent Mr. Corydon in the very California proceeding for which Mr. Corydon sought Mr. Flynn's services. This order came one and one-half years before the settlement agreement was entered into.

Ms. Plevin's letter contains a number of additional quasi-factual statements based on double or triple hearsay, which are totally irrelevant to the matters pending before this court and about which the undersigned lacks direct personal knowledge. Unlike Ms. Plevin, I will not further burden this court with uncorroborated statements and opinions about such matters.

I respectfully urge that the court strike and/or disregard Ms. Plevin's letter. It is an entirely gratuitous, unprofessional, generally false piece of irrelevancy, intended

to divert the court from the issues before it and to create prejudice against the appellants.

Very truly yours,

Eric M. Lieberman

cc: Mr. Gerald Armstrong
Toby L. Plevin, Esq.
Paul Morantz, Esq.
Michael J. Flynn, Esq.
Julia Dragojevic, Esq.
Clerk of the Superior Court
of California